

**MEDICAL BOARD OF CALIFORNIA**  
**FINAL STATEMENT OF REASONS**

**Hearing Date:** October 30, 2009

**Subject Matter of Proposed Regulations:** Disciplinary Guidelines

**Section Affected:** 16 CCR Section 1361

**Updated Information:**

The Initial Statement of Reasons is included in the file. The text was modified following the public hearing, and noticed for a 15-day comment period. No comments were received during the 15-day comment period.

**Local Mandate:**

A mandate is not imposed on local agencies or school districts.

**Small Business Impact:**

This action has no significant adverse economic impact on small businesses.

**Consideration of Alternatives:**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

**Objections or Recommendations/Responses**

Comments were received prior to, and at the October 30, 2009 public hearing.

**Comments provided by Deputy Attorneys General:**

They suggested that, for clarity, the following portions of the "Guidelines" be modified in the following manner:

25. Solo Practice **Prohibition**

Respondent is prohibited from engaging in the solo practice of medicine. **Prohibited** Solo practice includes, but is not limited to, a practice where: 1) ~~respondent physicians~~ merely shares office space **with another physician** but ~~is are~~ not affiliated for purposes of providing patient care, or 2) ~~where respondent is would be~~ the sole

physician practitioner at that location.

#### 34. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine **in California** as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours per month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 19 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

#### **Response:**

Accepted; text modified as suggested, and incorporated in the 15-day Notice of Modified Text.

#### **Comments provided by Elizabeth R. Becker:**

##### **Probationary Condition # 18, Anger Management for Healthcare Professionals Program,**

Elizabeth Becker, president and founder of "Inner Solutions for Success" provided written comments (attached) and testimony at the public hearing. In summary, she objected to Condition # 18, relating to "Anger Management" as it was her concern that was too limiting and would not effectively address the causes of misbehavior of physicians. It was her opinion that disruptive behavior was caused by many reasons, often not because of anger, but other issues that could be better addressed than from anger management training, or other programs that could address disruptive behavior.

#### **Response:**

Accepted; the condition was repealed, and this change was incorporated in the 15-day

Notice of Modified Text. The Board will work on this issue in the future to determine if some replacement of that requirement would be better in addressing disruptive behavior. If such a requirement is identified, it will be considered for the next edition of the “Guidelines.”

**Comments provided by Yvonne Choong, representing the California Medical Association (CMA) spoke in opposition to Probationary Conditions 9 & 10 of the “Guidelines”:**

CMA provided written testimony (attached) prior to the hearing, as well as spoken testimony. In summary, the CMA objected to Conditions 9 & 10, relating to abstention from the use of Alcohol and Controlled Substances. The amended “Guidelines” would provide for an automatic suspension of a license should the probationary physician fail to cooperate in a biological fluid testing program or test positive for the banned substances. It is their argument that an automatic suspension would be a violation of due process rights.

**Response:**

Rejected: Physicians on probation have been afforded their due process rights prior to being placed on probation. The physician has been revoked, with the revocation stayed on the condition that he or she complies with the conditions of probation. The alternative would be to revoke the physician’s license entirely, and not allow them to be placed on probation. If the Board is not allowed to suspend a physician’s license for failing to comply with biological fluid testing or for testing positive for use of banned substances, the alternative would be to fully revoke the license and not allow physicians with substance abuse problems to be given the privilege of probation.

**Comments provided by Julie D’Angelo Fellmeth, representing the Center for Public Interest Law, spoke in support of Probationary Conditions 9 & 10 of the “Guidelines”:**

In response to CMA’s comments in opposition to Conditions 9 & 10 of the “Guidelines,” Ms. D’Angelo Fellmeth spoke in support of the automatic suspension provided in those conditions. She stated that physicians on probations have already been given their due process rights through a hearing, or by an agreed-upon stipulated agreement. The Board has necessarily found the physicians to have substance abuse problems that poses risks to patients, and positive drug tests should result in an immediate cessation of their practices.

**Response:**

Accepted. The Guidelines’ Conditions 9 & 10 were not repealed or modified.

**Finding of Necessity**

This regulatory action would not require licensees to submit a report.